

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JUNE 11, 2003

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AMENDED IN SENATE FEBRUARY 13, 2003

SENATE BILL

No. 1

Introduced by Senators Speier and Burton

(Principal coauthor: ~~Assembly Member Jackson~~) coauthors:

Assembly Members Jackson and Dutra

(Coauthors: Senators Bowen, Cedillo, Chesbro, Escutia, Karnette, Kuehl, ~~and Ortiz~~, Ortiz, and Romero)

(Coauthors: Assembly Members Chan, Cohn, Goldberg, Hancock, Kehoe, Koretz, Laird, Leno, *Levine*, *Lieber*, Lowenthal, Mullin, Pavley, and Simitian)

December 2, 2002

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Speier. Financial institutions: nonpublic personal information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that

regard authorizes consumers to direct that the information not be shared with nonaffiliated third parties.

This bill would enact the California Financial Information Privacy Act, which would require a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the consumer's nonpublic personal information, as defined. The bill would generally allow a consumer to direct the financial institution to not share the nonpublic personal information with affiliated companies or with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services, but would not restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries or in certain other cases if both entities are regulated by the same functional regulator and are engaged in the same line of business, among other requirements. The bill would require the permission of the consumer before the financial institution could share the nonpublic personal information with other nonaffiliated companies. The bill would provide that a financial institution is not required to provide this written form to its consumers if the financial institution does not disclose any nonpublic personal information to any nonaffiliated 3rd party or to any affiliate.

This bill would provide that a financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share nonpublic personal information. The bill would require a financial institution to comply with the consumer's request regarding nonpublic personal information within 45 days of receipt of the request.

This bill would provide that a financial institution may disclose nonpublic personal information to an affiliate or a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met. The bill would provide other exceptions from its provisions applicable to particular situations.

This bill would provide that nonpublic personal information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.



This bill would also provide for disclosure of nonpublic personal information under various other specified circumstances.

This bill would provide that enactment of these provisions preempts all local agency ordinances and regulations relating to this subject.

This bill would enact other related provisions.

This bill would also provide various civil penalties for negligent, or knowing and willful violations of these provisions. ~~The penalties under the bill would not become operative until on July 1, 2004.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. — Division 1.2 (commencing with Section 4050)~~
SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. CALIFORNIA FINANCIAL INFORMATION
PRIVACY ACT

4050. This division shall be known and may be cited as the California Financial Information Privacy Act.

4051. (a) The Legislature intends for financial institutions to provide their consumers notice and meaningful choice about how consumers' nonpublic personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the California Financial Information Privacy Act to afford persons greater privacy protections than those provided in Public Law 106-102, the federal Gramm-Leach-Bliley Act, and that this division be interpreted to be consistent with that purpose.

4051.5. (a) The Legislature finds and declares all of the following:

(1) The California Constitution protects the privacy of California citizens from unwarranted intrusions into their private and personal lives.

(2) Federal banking legislation, known as the Gramm-Leach-Bliley Act, which breaks down restrictions on affiliation among different types of financial institutions, increases the likelihood that the personal financial information of California

1 residents will be widely shared among, between, and within
2 companies.

3 (3) The policies intended to protect financial privacy imposed
4 by the Gramm-Leach-Bliley Act are inadequate to meet the privacy
5 concerns of California residents.

6 (4) Because of the limitations of these federal policies, the
7 Gramm-Leach-Bliley Act explicitly permits states to enact privacy
8 protections that are stronger than those provided in federal law.

9 (b) It is the intent of the Legislature in enacting this division:

10 (1) To ensure that Californians have the ability to control the
11 disclosure of what the Gramm-Leach-Bliley Act calls nonpublic
12 personal information.

13 (2) To achieve that control for California consumers by
14 requiring that financial institutions that want to share information
15 with third parties and unrelated companies seek and acquire the
16 affirmative consent of California consumers prior to sharing the
17 information.

18 (3) To further achieve that control for California consumers by
19 providing consumers with the ability to prevent the sharing of
20 financial information among affiliated companies through a
21 simple opt-out mechanism via a clear and understandable notice
22 provided to the consumer.

23 (4) To provide, to the maximum extent possible, consistent with
24 the purposes cited above, a level playing field among types and
25 sizes of businesses consistent with the objective of providing
26 consumers control over their nonpublic personal information,
27 including providing that those financial institutions with limited
28 affiliate relationships may enter into agreements with other
29 financial institutions as provided in this division, and providing
30 that the different business models of differing financial institutions
31 are treated in ways that provide consistent consumer control over
32 information-sharing practices.

33 (5) To adopt to the maximum extent feasible, consistent with the
34 purposes cited above, definitions consistent with federal law, so
35 that in particular there is no change in the ability of businesses to
36 carry out normal processes of commerce for transactions
37 voluntarily entered into by consumers.

38 4052. For the purposes of this division:

39 (a) “Nonpublic personal information” means personally
40 identifiable financial information (1) provided by a consumer to

1 a financial institution, (2) resulting from any transaction with the
2 consumer or any service performed for the consumer, or (3)
3 otherwise obtained by the financial institution. Nonpublic
4 personal information does not include publicly available
5 information that the financial institution has a reasonable basis to
6 believe is lawfully made available to the general public from (1)
7 federal, state, or local government records, (2) widely distributed
8 media, or (3) disclosures to the general public that are required to
9 be made by federal, state, or local law. Nonpublic personal
10 information shall include any list, description, or other grouping
11 of consumers, and publicly available information pertaining to
12 them, that is derived using any nonpublic personal information
13 other than publicly available information, but shall not include
14 any list, description, or other grouping of consumers, and publicly
15 available information pertaining to them, that is derived without
16 using any nonpublic personal information.

17 (b) “Personally identifiable financial information” means
18 information (1) that a consumer provides to a financial institution
19 to obtain a product or service from the financial institution, (2)
20 about a consumer resulting from any transaction involving a
21 product or service between the financial institution and a
22 consumer, or (3) that the financial institution otherwise obtains
23 about a consumer in connection with providing a product or
24 service to that consumer. Any personally identifiable information
25 is financial if it was obtained by a financial institution in
26 connection with providing a financial product or service to a
27 consumer. Personally identifiable financial information includes
28 all of the following:

29 (1) Information a consumer provides to a financial institution
30 on an application to obtain a loan, credit card, or other financial
31 product or service.

32 (2) Account balance information, payment history, overdraft
33 history, and credit or debit card purchase information.

34 (3) The fact that an individual is or has been a consumer of a
35 financial institution or has obtained a financial product or service
36 from a financial institution.

37 (4) Any information about a financial institution’s consumer if
38 it is disclosed in a manner that indicates that the individual is or
39 has been the financial institution’s consumer.



1 (5) Any information that a consumer provides to a financial
2 institution or that a financial institution or its agent otherwise
3 obtains in connection with collecting on a loan or servicing a loan.

4 (6) Any personally identifiable financial information collected
5 through an Internet cookie or an information collecting device
6 from a Web server.

7 (7) Information from a consumer report.

8 (c) “Financial institution” means any institution the business
9 of which is engaging in financial activities as described in Section
10 1843(k) of Title 12 of the United States Code and doing business
11 in this state. An institution that is not significantly engaged in
12 financial activities is not a financial institution. The term
13 “financial institution” does not include any institution that is
14 primarily engaged in providing hardware, software, or interactive
15 services, provided that it does not act as a debt collector, as defined
16 in 15 U.S.C. Sec. 1692a, or engage in activities for which the
17 institution is required to acquire a charter, license, or registration
18 from a state or federal governmental banking, insurance, or
19 securities agency. The term “financial institution” does not
20 include the Federal Agricultural Mortgage Corporation or any
21 entity chartered and operating under the Farm Credit Act of 1971
22 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell
23 or transfer nonpublic personal information to an affiliate or a
24 nonaffiliated third party. The term “financial institution” does not
25 include institutions chartered by Congress specifically to engage
26 in a proposed or actual securitization, secondary market sale,
27 including sales of servicing rights, or similar transactions related
28 to a transaction of the consumer, as long as those institutions do
29 not sell or transfer nonpublic personal information to a
30 nonaffiliated third party. The term “financial institution” does not
31 include any provider of professional services, or any wholly owned
32 affiliate thereof, that is prohibited by rules of professional ethics
33 and applicable law from voluntarily disclosing confidential client
34 information without the consent of the client. The term “financial
35 institution” does not include any person licensed as a dealer under
36 Article 1 (commencing with Section 11700) of Chapter 4 of
37 Division 5 of the Vehicle Code that enters into contracts for the
38 installment sale or lease of motor vehicles pursuant to the
39 requirements of Chapter 2B (commencing with Section 2981) or
40 2D (commencing with Section 2985.7) of Title 14 of Part 4 of



1 *Division 3 of the Civil Code and assigns substantially all of those*
2 *contracts to financial institutions within 30 days.*

3 (d) *“Affiliate” means any entity that controls, is controlled by,*
4 *or is under common control with, another entity, but does not*
5 *include a joint employee of the entity and the affiliate. A franchisor,*
6 *including any affiliate thereof, shall be deemed an affiliate of the*
7 *franchisee for purposes of this division.*

8 (e) *“Nonaffiliated third party” means any entity that is not an*
9 *affiliate of, or related by common ownership or affiliated by*
10 *corporate control with, the financial institution, but does not*
11 *include a joint employee of that institution and a third party.*

12 (f) *“Consumer” means an individual resident of this state, or*
13 *that individual’s legal representative, who obtains or has obtained*
14 *from a financial institution a financial product or service to be*
15 *used primarily for personal, family, or household purposes. For*
16 *purposes of this division, an individual resident of this state is*
17 *someone whose last known mailing address, other than an Armed*
18 *Forces Post Office or Fleet Post Office address, as shown in the*
19 *records of the financial institution, is located in this state. For*
20 *purposes of this division, an individual is not a consumer of a*
21 *financial institution solely because he or she is (1) a participant*
22 *or beneficiary of an employee benefit plan that a financial*
23 *institution administers or sponsors, or for which the financial*
24 *institution acts as a trustee, insurer, or fiduciary, (2) covered under*
25 *a group or blanket insurance policy or group annuity contract*
26 *issued by the financial institution, (3) a beneficiary in a workers’*
27 *compensation plan, (4) a beneficiary of a trust for which the*
28 *financial institution is a trustee, or (5) a person who has*
29 *designated the financial institution as trustee for a trust, provided*
30 *that the financial institution provides all required notices and*
31 *rights required by this division to the plan sponsor, group or*
32 *blanket insurance policyholder, or group annuity contractholder.*

33 (g) *“Control” means (1) ownership or power to vote 25 percent*
34 *or more of the outstanding shares of any class of voting security of*
35 *a company, acting through one or more persons, (2) control in any*
36 *manner over the election of a majority of the directors, or of*
37 *individuals exercising similar functions, or (3) the power to*
38 *exercise, directly or indirectly, a controlling influence over the*
39 *management or policies of a company. However, for purposes of*
40 *the application of the definition of control as it relates to credit*

1 unions, a credit union has a controlling influence over the
2 management or policies of a credit union service organization
3 (CUSO), as that term is defined by state or federal law or
4 regulation, if the CUSO is at least 67 percent owned by credit
5 unions. For purposes of the application of the definition of control
6 to a financial institution subject to regulation by the United States
7 Securities and Exchange Commission, a person who owns
8 beneficially, either directly or through one or more controlled
9 companies, more than 25 percent of the voting securities of a
10 company is presumed to control the company, and a person who
11 does not own more than 25 percent of the voting securities of a
12 company is presumed not to control the company, and a
13 presumption regarding control may be rebutted by evidence, but in
14 the case of an investment company, the presumption shall continue
15 until the United States Securities and Exchange Commission
16 makes a decision to the contrary according to the procedures
17 described in Section 2(a)(9) of the federal Investment Company
18 Act of 1940.

19 (h) “Necessary to effect, administer, or enforce” means the
20 following:

21 (1) The disclosure is required, or is a usual, appropriate, or
22 acceptable method to carry out the transaction or the product or
23 service business of which the transaction is a part, and record or
24 service or maintain the consumer’s account in the ordinary course
25 of providing the financial service or financial product, or to
26 administer or service benefits or claims relating to the transaction
27 or the product or service business of which it is a part, and includes
28 the following:

29 (A) Providing the consumer or the consumer’s agent or broker
30 with a confirmation, statement, or other record of the transaction,
31 or information on the status or value of the financial service or
32 financial product.

33 (B) The accrual or recognition of incentives, discounts, or
34 bonuses associated with the transaction or communications to
35 eligible existing consumers of the financial institution regarding
36 the availability of those incentives, discounts, and bonuses that are
37 provided by the financial institution or another party.

38 (C) In the case of a financial institution that has issued a credit
39 account bearing the name of a company primarily engaged in
40 retail sales or a name proprietary to a company primarily engaged



1 *in retail sales, the financial institution providing the retailer with*
2 *nonpublic personal information as follows:*

3 *(i) Providing the retailer, or licensees or contractors of the*
4 *retailer that provide products or services in the name of the retailer*
5 *and under a contract with the retailer, with the names and*
6 *addresses of the consumers in whose name the account is held and*
7 *a record of the purchases made using the credit account from a*
8 *business establishment, including a Web site or catalog, bearing*
9 *the brand name of the retailer.*

10 *(ii) Where the credit account can only be used for transactions*
11 *with the retailer or affiliates of that retailer that are also primarily*
12 *engaged in retail sales, providing the retailer, or licensees or*
13 *contractors of the retailer that provide products or services in the*
14 *name of the retailer and under a contract with the retailer, with*
15 *nonpublic personal information concerning the credit account, in*
16 *connection with the offering or provision of the products or*
17 *services of the retailer and those licensees or contractors.*

18 *(2) The disclosure is required or is one of the lawful or*
19 *appropriate methods to enforce the rights of the financial*
20 *institution or of other persons engaged in carrying out the*
21 *financial transaction or providing the product or service.*

22 *(3) The disclosure is required, or is a usual, appropriate, or*
23 *acceptable method for insurance underwriting or the placement of*
24 *insurance products by licensed agents and brokers with authorized*
25 *insurance companies at the consumer's request, for reinsurance,*
26 *stop loss insurance, or excess loss insurance purposes, or for any*
27 *of the following purposes as they relate to a consumer's insurance:*

28 *(A) Account administration.*

29 *(B) Reporting, investigating, or preventing fraud or material*
30 *misrepresentation.*

31 *(C) Processing premium payments.*

32 *(D) Processing insurance claims.*

33 *(E) Administering insurance benefits, including utilization*
34 *review activities.*

35 *(F) Participating in research projects.*

36 *(G) As otherwise required or specifically permitted by federal*
37 *or state law.*

38 *(4) The disclosure is required, or is a usual, appropriate, or*
39 *acceptable method, in connection with the following:*

1 (A) The authorization, settlement, billing, processing,
2 clearing, transferring, reconciling, or collection of amounts
3 charged, debited, or otherwise paid using a debit, credit or other
4 payment card, check, or account number, or by other payment
5 means.

6 (B) The transfer of receivables, accounts, or interests therein.

7 (C) The audit of debit, credit, or other payment information.

8 (5) The disclosure is required in a transaction covered by the
9 federal Real Estate Settlement Procedures Act (12 U.S.C. Sec.
10 2601 et seq.) in order to offer settlement services prior to the close
11 of escrow (as those services are defined in 12 U.S.C. Sec. 2602),
12 provided that (A) the nonpublic personal information is disclosed
13 for the sole purpose of offering those settlement services and (B)
14 the nonpublic personal information disclosed is limited to that
15 necessary to enable the financial institution to offer those
16 settlement services in that transaction.

17 (i) “Financial product or service” means any product or
18 service that a financial holding company could offer by engaging
19 in an activity that is financial in nature or incidental to a financial
20 activity under subsection (k) of Section 1843 of Title 12 of the
21 United States Code (the United States Bank Holding Company Act
22 of 1956). Financial service includes a financial institution’s
23 evaluation or brokerage of information that the financial
24 institution collects in connection with a request or an application
25 from a consumer for a financial product or service.

26 (j) “Clear and conspicuous” means that a notice is reasonably
27 understandable and designed to call attention to the nature and
28 significance of the information contained in the notice.

29 (k) “Widely distributed media” means media available to the
30 general public and includes a telephone book, a television or radio
31 program, a newspaper, or a Web site that is available to the general
32 public on an unrestricted basis.

33 4052.5. Except as provided in Sections 4053, 4054.6, and
34 4056, a financial institution shall not sell, share, transfer, or
35 otherwise disclose nonpublic personal information to or with any
36 nonaffiliated third parties without the explicit prior consent of the
37 consumer to whom the nonpublic personal information relates.

38 4053. (a) (1) A financial institution shall not disclose to, or
39 share a consumer’s nonpublic personal information with, any
40 nonaffiliated third party as prohibited by Section 4052.5, unless



1 *the financial institution has obtained a consent acknowledgment*
2 *from the consumer that complies with paragraph (2) that*
3 *authorizes the financial institution to disclose or share the*
4 *nonpublic personal information. Nothing in this section shall*
5 *prohibit or otherwise apply to the disclosure of nonpublic personal*
6 *information as allowed in Section 4056. A financial institution*
7 *shall not discriminate against or deny an otherwise qualified*
8 *consumer a financial product or a financial service because the*
9 *consumer has not provided consent pursuant to this subdivision*
10 *and Section 4052.5 to authorize the financial institution to disclose*
11 *or share nonpublic personal information pertaining to him or her*
12 *with any nonaffiliated third party. Nothing in this section shall*
13 *prohibit a financial institution from denying a consumer a*
14 *financial product or service if the financial institution could not*
15 *provide the product or service to a consumer without the consent*
16 *to disclose the consumer's nonpublic personal information*
17 *required by this subdivision and Section 4052.5, and the consumer*
18 *has failed to provide consent. A financial institution shall not be*
19 *liable for failing to offer products and services to a consumer*
20 *solely because that consumer has failed to provide consent*
21 *pursuant to this subdivision and Section 4052.5 and the financial*
22 *institution could not offer the product or service without the*
23 *consent to disclose the consumer's nonpublic personal*
24 *information required by this subdivision and Section 4052.5, and*
25 *the consumer has failed to provide consent. Nothing in this section*
26 *is intended to prohibit a financial institution from offering*
27 *incentives or discounts to elicit a specific response to the notice.*

28 *(2) A financial institution shall utilize a form, statement, or*
29 *writing to obtain consent to disclose nonpublic personal*
30 *information to nonaffiliated third parties as required by Section*
31 *4052.5 and this subdivision. The form, statement, or writing shall*
32 *meet all of the following criteria:*

33 *(A) The form, statement, or writing is a separate document, not*
34 *attached to any other document.*

35 *(B) The form, statement, or writing is dated and signed by the*
36 *consumer.*

37 *(C) The form, statement, or writing clearly and conspicuously*
38 *discloses that by signing, the consumer is consenting to the*
39 *disclosure to nonaffiliated third parties of nonpublic personal*
40 *information pertaining to the consumer.*

1 (D) The form, statement, or writing clearly and conspicuously
2 discloses (i) that the consent will remain in effect until revoked or
3 modified by the consumer; (ii) that the consumer may revoke the
4 consent at any time; and (iii) the procedure for the consumer to
5 revoke consent.

6 (E) The form, statement, or writing clearly and conspicuously
7 informs the consumer that (i) the financial institution will maintain
8 the document or a true and correct copy; (ii) the consumer is
9 entitled to a copy of the document upon request; and (iii) the
10 consumer may want to make a copy of the document for the
11 consumer's records.

12 (b) (1) A financial institution shall not disclose to, or share a
13 consumer's nonpublic personal information with, an affiliate
14 unless the financial institution has clearly and conspicuously
15 notified the consumer annually in writing pursuant to subdivision
16 (d) that the nonpublic personal information may be disclosed to an
17 affiliate of the financial institution and the consumer has not
18 directed that the nonpublic personal information not be disclosed.
19 A financial institution does not disclose information to, or share
20 information with, its affiliate merely because information is
21 maintained in common information systems or databases, and
22 employees of the financial institution and its affiliate have access
23 to those common information systems or databases, or a consumer
24 accesses a Web site jointly operated or maintained under a
25 common name by or on behalf of the financial institution and its
26 affiliate, provided that where a consumer has exercised his or her
27 right to prohibit disclosure pursuant to this division, nonpublic
28 personal information is not further disclosed or used by an affiliate
29 except as permitted by this division.

30 (2) Subdivision (a) shall not prohibit the release of nonpublic
31 personal information by a financial institution with whom the
32 consumer has a relationship to a nonaffiliated financial institution
33 for purposes of jointly offering a financial product or financial
34 service pursuant to a written agreement with the financial
35 institution that receives the nonpublic personal information
36 provided that all of the following requirements are met:

37 (A) The financial product or service offered is a product or
38 service of, and is provided by, at least one of the financial
39 institutions that is a party to the written agreement.



1 (B) The financial product or service is jointly offered,
2 endorsed, or sponsored, and clearly and conspicuously identifies
3 for the consumer the financial institutions that disclose and receive
4 the disclosed nonpublic personal information.

5 (C) The written agreement provides that the financial
6 institution that receives that nonpublic personal information is
7 required to maintain the confidentiality of the information and is
8 prohibited from disclosing or using the information other than to
9 carry out the joint offering or servicing of a financial product or
10 financial service that is the subject of the written agreement.

11 (D) The financial institution that releases the nonpublic
12 personal information has complied with subdivision (d) and the
13 consumer has not directed that the nonpublic personal information
14 not be disclosed.

15 (E) Notwithstanding this section, until January 1, 2005, a
16 financial institution may disclose nonpublic personal information
17 to a nonaffiliated financial institution pursuant to a preexisting
18 contract with the nonaffiliated financial institution, for purposes
19 of offering a financial product or financial service, if that contract
20 was entered into on or before January 1, 2004. Beginning on
21 January 1, 2005, no nonpublic personal information may be
22 disclosed pursuant to that contract unless all the requirements of
23 this subdivision are met.

24 (3) Nothing in this subdivision shall prohibit a financial
25 institution from disclosing or sharing nonpublic personal
26 information as otherwise specifically permitted by this division.

27 (4) A financial institution shall not discriminate against or
28 deny an otherwise qualified consumer a financial product or a
29 financial service because the consumer has directed pursuant to
30 this subdivision that nonpublic personal information pertaining to
31 him or her not be disclosed. A financial institution shall not be
32 required to offer or provide products or services offered through
33 affiliated entities or jointly with nonaffiliated financial institutions
34 pursuant to paragraph (2) where the consumer has directed that
35 nonpublic personal information not be disclosed pursuant to this
36 subdivision and the financial institution could not offer or provide
37 the products or services to the consumer without disclosure of the
38 consumer's nonpublic personal information that the consumer has
39 directed not be disclosed pursuant to this subdivision. A financial
40 institution shall not be liable for failing to offer or provide products

1 or services offered through affiliated entities or jointly with
2 nonaffiliated financial institutions pursuant to paragraph (2)
3 solely because the consumer has directed that nonpublic personal
4 information not be disclosed pursuant to this subdivision and the
5 financial institution could not offer or provide the products or
6 services to the consumer without disclosure of the consumer's
7 nonpublic personal information that the consumer has directed not
8 be disclosed to affiliates pursuant to this subdivision. Nothing in
9 this section is intended to prohibit a financial institution from
10 offering incentives or discounts to elicit a specific response to the
11 notice set forth in this division. Nothing in this section shall
12 prohibit the disclosure of nonpublic personal information allowed
13 by Section 4056.

14 (5) The financial institution may, at its option, choose instead
15 to comply with the requirements of subdivision (a).

16 (c) Nothing in this division shall restrict or prohibit the sharing
17 of nonpublic personal information between a financial institution
18 and its wholly owned financial institution subsidiaries; among
19 financial institutions that are each wholly owned by the same
20 financial institution; among financial institutions that are wholly
21 owned by the same holding company; or among the insurance and
22 management entities of a single insurance holding company
23 system consisting of one or more reciprocal insurance exchanges
24 which has a single corporation or its wholly owned subsidiaries
25 providing management services to the reciprocal insurance
26 exchanges, provided that in each case all of the following
27 requirements are met:

28 (1) The financial institution disclosing the nonpublic personal
29 information and the financial institution receiving it are regulated
30 by the same functional regulator; provided, however, that for
31 purposes of this subdivision, financial institutions regulated by the
32 Office of the Comptroller of the Currency, Office of Thrift
33 Supervision, National Credit Union Administration, or a state
34 regulator of depository institutions shall be deemed to be regulated
35 by the same functional regulator; financial institutions regulated
36 by the Securities and Exchange Commission, the United States
37 Department of Labor, or a state securities regulator shall be
38 deemed to be regulated by the same functional regulator; and
39 insurers admitted in this state to transact insurance and licensed



1 *to write insurance policies shall be deemed to be in compliance*
2 *with this paragraph.*

3 *(2) The financial institution disclosing the nonpublic personal*
4 *information and the financial institution receiving it are both*
5 *principally engaged in the same line of business. For purposes of*
6 *this subdivision, “same line of business” shall be one and only one*
7 *of the following:*

8 *(A) Insurance.*

9 *(B) Banking.*

10 *(C) Securities.*

11 *(3) The financial institution disclosing the nonpublic personal*
12 *information and the financial institution receiving it share a*
13 *common brand, excluding a brand consisting solely of a graphic*
14 *element or symbol, within their trademark, service mark, or trade*
15 *name, which is used to identify the source of the products and*
16 *services provided.*

17 *A wholly owned subsidiary shall include a subsidiary wholly*
18 *owned directly or wholly owned indirectly in a chain of wholly*
19 *owned subsidiaries.*

20 *Nothing in this subdivision shall permit the disclosure by a*
21 *financial institution of medical record information, as defined in*
22 *subdivision (q) of Section 791.02 of the Insurance Code, except in*
23 *compliance with the requirements of this division, including the*
24 *requirements set forth in subdivisions (a) and (b).*

25 *(d) (1) A financial institution shall be conclusively presumed*
26 *to have satisfied the notice requirements of subdivision (b) if it uses*
27 *the form set forth in this subdivision. The form set forth in this*
28 *subdivision or a form that complies with subparagraphs (A) to (L),*
29 *inclusive, of this paragraph shall be sent by the financial*
30 *institution to the consumer so that the consumer may make a*
31 *decision and provide direction to the financial institution*
32 *regarding the sharing of his or her nonpublic personal*
33 *information. If a financial institution does not use the form set forth*
34 *in this subdivision, the financial institution shall use a form that*
35 *meets all of the following requirements:*

36 *(A) The form uses the same title (“IMPORTANT PRIVACY*
37 *CHOICES FOR CONSUMERS”) and the headers, if applicable,*
38 *as follows: “Restrict Information Sharing With Companies We*
39 *Own Or Control (Affiliates)” and “Restrict Information Sharing*

1 *With Other Companies We Do Business With To Provide Financial*
2 *Products and Services.”*

3 (B) *The titles and headers in the form are clearly and*
4 *conspicuously displayed, and no text in the form is smaller than*
5 *10-point type.*

6 (C) *The form is a separate document, except as provided by*
7 *subparagraph (D) of paragraph (2), and Sections 4054 and*
8 *4058.7.*

9 (D) *The choice or choices pursuant to subdivision (b) and*
10 *Section 4054.6, if applicable, provided in the form are stated*
11 *separately and may be selected by checking a box.*

12 (E) *The form is designed to call attention to the nature and*
13 *significance of the information in the document.*

14 (F) *The form presents information in clear and concise*
15 *sentences, paragraphs, and sections.*

16 (G) *The form uses short explanatory sentences (an average of*
17 *15-20 words) or bullet lists whenever possible.*

18 (H) *The form avoids multiple negatives, legal terminology, and*
19 *highly technical terminology whenever possible.*

20 (I) *The form avoids explanations that are imprecise and readily*
21 *subject to different interpretations.*

22 (J) *The form achieves a minimum Flesch reading ease score of*
23 *50, as defined in Section 2689.4(a)(7) of Title 10 of the California*
24 *Code of Regulations, in effect on March 24, 2003, except that the*
25 *information in the form included to comply with subparagraph (A)*
26 *shall not be included in the calculation of the Flesch reading ease*
27 *score, and the information used to describe the choice or choices*
28 *pursuant to subparagraph (D) shall score no lower than the*
29 *information describing the comparable choice or choices set forth*
30 *in the form in this subdivision.*

31 (K) *The form provides wide margins, ample line spacing and*
32 *uses boldface or italics for key words.*

33 (L) *The form is not more than one page.*

34 (2) (A) *None of the instructional items appearing in brackets*
35 *in the form set forth in this subdivision shall appear in the form*
36 *provided to the consumer, as those items are for explanation*
37 *purposes only. If a financial institution does not disclose or share*
38 *nonpublic personal information as described in a header of the*
39 *form, the financial institution may omit the applicable header or*
40 *headers, and the accompanying information and box, in the form*



1 *it provides pursuant to this subdivision. The form with those*
2 *omissions shall be conclusively presumed to satisfy the notice*
3 *requirements of this subdivision.*



1 *PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE*
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2 (B) If a financial institution uses a form other than that set forth
3 in this subdivision, the financial institution may submit that form
4 to its functional regulator for approval, and for forms filed with the
5 Office of Privacy Protection prior to July 1, 2007, that approval
6 shall constitute a rebuttable presumption that the form complies
7 with this section.

8 (C) A financial institution shall not be in violation of this
9 subdivision solely because it includes in the form one or more brief
10 examples or explanations of the purpose or purposes, or context,
11 within which information will be shared, as long as those examples
12 meet the clarity and readability standards set forth in paragraph
13 (1).

14 (D) The outside of the envelope in which the form is sent to the
15 consumer shall clearly state in 16-point boldface type
16 “IMPORTANT PRIVACY CHOICES,” except that a financial
17 institution sending the form to a consumer in the same envelope as
18 a bill, account statement, or application requested by the
19 consumer does not have to include the wording “IMPORTANT
20 PRIVACY CHOICES” on that envelope. The form shall be sent in
21 any of the following ways:

22 (i) With a bill, other statement of account, or application
23 requested by the consumer, in which case the information required
24 by Title V of the Gramm-Leach-Bliley Act may also be included in
25 the same envelope.

26 (ii) As a separate notice or with the information required by
27 Title V of the Gramm-Leach-Bliley Act, and including only
28 information related to privacy.

29 (iii) With any other mailing, in which case it shall be the first
30 page of the mailing.

31 (E) If a financial institution uses a form other than that set forth
32 in this subdivision, that form shall be filed with the Office of
33 Privacy Protection within 30 days after it is first used.

34 (3) The consumer shall be provided a reasonable opportunity
35 prior to disclosure of nonpublic personal information to direct that
36 nonpublic personal information not be disclosed. A consumer may
37 direct at any time that his or her nonpublic personal information
38 not be disclosed. A financial institution shall comply with a
39 consumer’s directions concerning the sharing of his or her
40 nonpublic personal information within 45 days of receipt by the

1 *financial institution. When a consumer directs that nonpublic*
2 *personal information not be disclosed, that direction is in effect*
3 *until otherwise stated by the consumer. A financial institution that*
4 *has not provided a consumer with annual notice pursuant to*
5 *subdivision (b) shall provide the consumer with a form that meets*
6 *the requirements of this subdivision, and shall allow 45 days to*
7 *lapse from the date of providing the form in person or the postmark*
8 *or other postal verification of mailing before disclosing nonpublic*
9 *personal information pertaining to the consumer.*

10 *Nothing in this subdivision shall prohibit the disclosure of*
11 *nonpublic personal information as allowed by subdivision (c) or*
12 *Section 4056.*

13 *(4) A financial institution may elect to comply with the*
14 *requirements of subdivision (a) with respect to disclosure of*
15 *nonpublic personal information to an affiliate or with respect to*
16 *nonpublic personal information disclosed pursuant to paragraph*
17 *(2) of subdivision (b), or subdivision (c) of Section 4054.6.*

18 *(5) If a financial institution does not have a continuing*
19 *relationship with a consumer other than the initial transaction in*
20 *which the product or service is provided, no annual disclosure*
21 *requirement exists pursuant to this section as long as the financial*
22 *institution provides the consumer with the form required by this*
23 *section at the time of the initial transaction. As used in this section,*
24 *“annually” means at least once in any period of 12 consecutive*
25 *months during which that relationship exists. The financial*
26 *institution may define the 12-consecutive-month period, but shall*
27 *apply it to the consumer on a consistent basis. If, for example, a*
28 *financial institution defines the 12-consecutive-month period as a*
29 *calendar year and provides the annual notice to the consumer once*
30 *in each calendar year, it complies with the requirement to send the*
31 *notice annually.*

32 *(6) A financial institution with assets in excess of twenty-five*
33 *million dollars (\$25,000,000) shall include a self-addressed first*
34 *class business reply return envelope with the notice. A financial*
35 *institution with assets of up to and including twenty-five million*
36 *dollars (\$25,000,000) shall include a self-addressed return*
37 *envelope with the notice. In lieu of the first class business reply*
38 *return envelope required by this paragraph, a financial institution*
39 *may offer a self-addressed return envelope with the notice and at*
40 *least two alternative cost-free means for consumers to*

1 *communicate their privacy choices, such as calling a toll-free*
2 *number, sending a facsimile to a toll-free telephone number, or*
3 *using electronic means. A financial institution shall clearly and*
4 *conspicuously disclose in the form required by this subdivision the*
5 *information necessary to direct the consumer on how to*
6 *communicate his or her choices, including the toll-free or facsimile*
7 *number or Web site address that may be used, if those means of*
8 *communication are offered by the financial institution.*

9 (7) *A financial institution may provide a joint notice from it and*
10 *one or more of its affiliates or other financial institutions, as*
11 *identified in the notice, so long as the notice is accurate with*
12 *respect to the financial institution and the affiliates and other*
13 *financial institutions.*

14 (e) *Nothing in this division shall prohibit a financial institution*
15 *from marketing its own products and services or the products and*
16 *services of affiliates or nonaffiliated third parties to customers of*
17 *the financial institution as long as (1) nonpublic personal*
18 *information is not disclosed in connection with the delivery of the*
19 *applicable marketing materials to those customers except as*
20 *permitted by Section 4056 and (2) in cases in which the applicable*
21 *nonaffiliated third party may extrapolate nonpublic personal*
22 *information about the consumer responding to those marketing*
23 *materials, the applicable nonaffiliated third party has signed a*
24 *contract with the financial institution under the terms of which (A)*
25 *the nonaffiliated third party is prohibited from using that*
26 *information for any purpose other than the purpose for which it*
27 *was provided, as set forth in the contract, and (B) the financial*
28 *institution has the right by audit, inspections, or other means to*
29 *verify the nonaffiliated third party's compliance with that contract.*

30 4053.5. *Except as otherwise provided in this division, an*
31 *entity that receives nonpublic personal information from a*
32 *financial institution under this division shall not disclose this*
33 *information to any other entity, unless the disclosure would be*
34 *lawful if made directly to the other entity by the financial*
35 *institution. An entity that receives nonpublic personal information*
36 *pursuant to any exception set forth in Section 4056 shall not use*
37 *or disclose the information except in the ordinary course of*
38 *business to carry out the activity covered by the exception under*
39 *which the information was received.*

1 4054. (a) *Nothing in this division shall require a financial*
2 *institution to provide a written notice to a consumer pursuant to*
3 *Section 4053 if the financial institution does not disclose*
4 *nonpublic personal information to any nonaffiliated third party or*
5 *to any affiliate, except as allowed in this division.*

6 (b) *A notice provided to a member of a household pursuant to*
7 *Section 4053 shall be considered notice to all members of that*
8 *household unless that household contains another individual who*
9 *also has a separate account with the financial institution.*

10 (c) (1) *The requirement to send a written notice to a consumer*
11 *may be fulfilled by electronic means if the following requirements*
12 *are met:*

13 (A) *The notice, and the manner in which it is sent, meets all of*
14 *the requirements for notices that are required by law to be in*
15 *writing, as set forth in Section 101 of the federal Electronic*
16 *Signatures in Global and National Commerce Act.*

17 (B) *All other requirements applicable to the notice, as set forth*
18 *in this division, are met, including, but not limited to, requirements*
19 *concerning content, timing, form, and delivery. An electronic*
20 *notice sent pursuant to this section is not required to include a*
21 *return envelope.*

22 (C) *The notice is delivered to the consumer in a form the*
23 *consumer may keep.*

24 (2) *A notice that is made available to a consumer, and is not*
25 *delivered to the consumer, does not satisfy the requirements of*
26 *paragraph (1).*

27 (3) *Any electronic consumer reply to an electronic notice sent*
28 *pursuant to this division is effective. A person that electronically*
29 *sends a notice required by this division to a consumer may not by*
30 *contract, or otherwise, eliminate the effectiveness of the*
31 *consumer's electronic reply.*

32 (4) *This division modifies the provisions of Section 101 of the*
33 *federal Electronic Signatures in Global and National Commerce*
34 *Act. However, it does not modify, limit, or supersede the provisions*
35 *of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal*
36 *Electronic Signatures in Global and National Commerce Act, nor*
37 *does it authorize electronic delivery of any notice of the type*
38 *described in subsection (b) of Section 103 of that federal act.*

39 4054.6. (a) *When a financial institution and an organization*
40 *or business entity that is not a financial institution ("affinity*

1 partner”) have an agreement to issue a credit card in the name of
2 the affinity partner (“affinity card”), the financial institution shall
3 be permitted to disclose to the affinity partner in whose name the
4 card is issued only the following information pertaining to the
5 financial institution’s customers who are in receipt of the affinity
6 card: (1) name, address, telephone number, and electronic mail
7 address and (2) record of purchases made using the affinity card
8 in a business establishment, including a Web site, bearing the
9 brand name of the affinity partner.

10 (b) When a financial institution and an affinity partner have an
11 agreement to issue a financial product or service, other than a
12 credit card, on behalf of the affinity partner (“affinity financial
13 product or service”), the financial institution shall be permitted to
14 disclose to the affinity partner only the following information
15 pertaining to the financial institution’s customers who obtained
16 the affinity financial product or service: name, address, telephone
17 number, and electronic mail address.

18 (c) The disclosures specified in subdivisions (a) and (b) shall
19 be permitted only if the following requirements are met:

20 (1) The financial institution has provided the consumer a notice
21 meeting the requirements of subdivision (d) of Section 4053, and
22 the consumer has not directed that nonpublic personal information
23 not be disclosed. A response to a notice meeting the requirements
24 of subdivision (d) directing the financial institution to not disclose
25 nonpublic personal information to a nonaffiliated financial
26 institution shall be deemed a direction to the financial institution
27 to not disclose nonpublic personal information to an affinity
28 partner, unless the form containing the notice provides the
29 consumer with a separate choice for disclosure to affinity partners.

30 (2) The financial institution has a contractual agreement with
31 the affinity partner that requires the affinity partner to maintain the
32 confidentiality of the nonpublic personal information and
33 prohibits affinity partners from using the information for any
34 purposes other than verifying membership, verifying the
35 consumer’s contact information, or offering the affinity partner’s
36 own products or services to the consumer.

37 (3) The customer list is not disclosed in any way that reveals or
38 permits extrapolation of any additional nonpublic personal
39 information about any customer on the list.

1 (4) If the affinity partner sends any message to any electronic
2 mail addresses obtained pursuant to this section, the message shall
3 include at least both of the following:

4 (A) The identity of the sender of the message.

5 (B) A cost-free means for the recipient to notify the sender not
6 to electronically mail any further message to the recipient.

7 (d) Nothing in this section shall prohibit the disclosure of
8 nonpublic personal information pursuant to Section 4056.

9 (e) This section does not apply to credit cards issued in the
10 name of an entity primarily engaged in retail sales or a name
11 proprietary to a company primarily engaged in retail sales.

12 4056. (a) This division shall not apply to information that is
13 not personally identifiable to a particular person.

14 (b) Notwithstanding Sections 4052.5, 4053, 4054, and 4054.6,
15 a financial institution may release nonpublic personal information
16 under the following circumstances:

17 (1) The nonpublic personal information is necessary to effect,
18 administer, or enforce a transaction requested or authorized by the
19 consumer; or in connection with servicing or processing a
20 financial product or service requested or authorized by the
21 consumer; or in connection with maintaining or servicing the
22 consumer's account with the financial institution, or with another
23 entity as part of a private label credit card program or other
24 extension of credit on behalf of that entity, or in connection with
25 a proposed or actual securitization or secondary market sale,
26 including sales of servicing rights, or similar transactions related
27 to a transaction of the consumer.

28 (2) The nonpublic personal information is released with the
29 consent of or at the direction of the consumer.

30 (3) The nonpublic personal information is:

31 (A) Released to protect the confidentiality or security of the
32 financial institution's records pertaining to the consumer, the
33 service or product, or the transaction therein.

34 (B) Released to protect against or prevent actual or potential
35 fraud, identity theft, unauthorized transactions, claims, or other
36 liability.

37 (C) Released for required institutional risk control, or for
38 resolving customer disputes or inquiries.

39 (D) Released to persons holding a legal or beneficial interest
40 relating to the consumer, including for purposes of debt collection.

1 (E) Released to persons acting in a fiduciary or representative
2 capacity on behalf of the consumer.

3 (4) The nonpublic personal information is released to provide
4 information to insurance rate advisory organizations, guaranty
5 funds or agencies, applicable rating agencies of the financial
6 institution, persons assessing the institution's compliance with
7 industry standards, and the institution's attorneys, accountants,
8 and auditors.

9 (5) The nonpublic personal information is released to the
10 extent specifically required or specifically permitted under other
11 provisions of law and in accordance with the Right to Financial
12 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law
13 enforcement agencies, including a federal functional regulator, the
14 Secretary of the Treasury with respect to subchapter II of Chapter
15 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
16 U.S.C. Secs. 1951-1959), the California Department of Insurance
17 or other state insurance regulators, or the Federal Trade
18 Commission, and self-regulatory organizations, or for an
19 investigation on a matter related to public safety.

20 (6) The nonpublic personal information is released in
21 connection with a proposed or actual sale, merger, transfer, or
22 exchange of all or a portion of a business or operating unit if the
23 disclosure of nonpublic personal information concerns solely
24 consumers of the business or unit.

25 (7) The nonpublic personal information is released to comply
26 with federal, state, or local laws, rules, and other applicable legal
27 requirements; to comply with a properly authorized civil, criminal,
28 administrative, or regulatory investigation or subpoena or
29 summons by federal, state, or local authorities; or to respond to
30 judicial process or government regulatory authorities having
31 jurisdiction over the financial institution for examination,
32 compliance, or other purposes as authorized by law.

33 (8) When a financial institution is reporting a known or
34 suspected instance of elder or dependent adult financial abuse or
35 is cooperating with a local adult protective services agency
36 investigation of known or suspected elder or dependent adult
37 financial abuse pursuant to Article 3 (commencing with Section
38 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
39 Institutions Code.

1 (9) The nonpublic personal information is released to an
2 affiliate or a nonaffiliated third party in order for the affiliate or
3 nonaffiliated third party to perform business or professional
4 services, such as printing, mailing services, data processing or
5 analysis, or customer surveys, on behalf of the financial
6 institution, provided that all of the following requirements are met:

7 (A) The services to be performed by the affiliate or
8 nonaffiliated third party could lawfully be performed by the
9 financial institution.

10 (B) There is a written contract between the affiliate or
11 nonaffiliated third party and the financial institution that prohibits
12 the affiliate or nonaffiliated third party, as the case may be, from
13 disclosing or using the nonpublic personal information other than
14 to carry out the purpose for which the financial institution
15 disclosed the information, as set forth in the written contract.

16 (C) The nonpublic personal information provided to the
17 affiliate or nonaffiliated third party is limited to that which is
18 necessary for the affiliate or nonaffiliated third party to perform
19 the services contracted for on behalf of the financial institution.

20 (D) The financial institution does not receive any payment from
21 or through the affiliate or nonaffiliated third party in connection
22 with, or as a result of, the release of the nonpublic personal
23 information.

24 (10) The nonpublic personal information is released to identify
25 or locate missing and abducted children, witnesses, criminals and
26 fugitives, parties to lawsuits, parents delinquent in child support
27 payments, organ and bone marrow donors, pension fund
28 beneficiaries, and missing heirs.

29 (11) The nonpublic personal information is released to a real
30 estate appraiser licensed or certified by the state for submission to
31 central data repositories such as the California Market Data
32 Cooperative, and the nonpublic personal information is compiled
33 strictly to complete other real estate appraisals and is not used for
34 any other purpose.

35 (12) The nonpublic personal information is released as
36 required by Title III of the federal United and Strengthening
37 America by Providing Appropriate Tools Required to Intercept and
38 Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L. 107-56).

39 (13) The nonpublic personal information is released either to
40 a consumer reporting agency pursuant to the Fair Credit

1 *Reporting Act (15 U.S.C. Sec. 1681 et seq.) or from a consumer*
2 *report reported by a consumer reporting agency.*

3 *(14) The nonpublic personal information is released in*
4 *connection with a written agreement between a consumer and a*
5 *broker-dealer registered under the Securities Exchange Act of*
6 *1934 or an investment adviser registered under the Investment*
7 *Advisers Act of 1940 to provide investment management services,*
8 *portfolio advisory services, or financial planning, and the*
9 *nonpublic personal information is released for the sole purpose of*
10 *providing the products and services covered by that agreement.*

11 *(c) Nothing in this division is intended to change existing law*
12 *relating to access by law enforcement agencies to information held*
13 *by financial institutions.*

14 *4056.5. (a) The provisions of this division do not apply to any*
15 *person or entity that meets the requirements of paragraph (1) or*
16 *(2) below. However, when nonpublic personal information is being*
17 *or will be shared by a person or entity meeting the requirements of*
18 *paragraph (1) or (2) with an affiliate or nonaffiliated third party,*
19 *this division shall apply.*

20 *(1) The person or entity is licensed in one or both of the*
21 *following categories and is acting within the scope of the*
22 *respective license or certificate:*

23 *(A) As an insurance producer, licensed pursuant to Chapter 5*
24 *(commencing with Section 1621), Chapter 6 (commencing with*
25 *Section 1760), or Chapter 8 (commencing with Section 1831) of*
26 *Division 1 of the Insurance Code, as a registered investment*
27 *adviser pursuant to Chapter 3 (commencing with Section 25230)*
28 *of Part 3 of Division 1 of Title 4 of the Corporations Code, or as*
29 *an investment adviser pursuant to Section 202(a)(11) of the federal*
30 *Investment Advisers Act of 1940.*

31 *(B) Is licensed to sell securities by the National Association of*
32 *Securities Dealers (NASD).*

33 *(2) The person or entity meets the requirements in paragraph*
34 *(1) and has a written contractual agreement with another person*
35 *or entity described in paragraph (1) and the contract clearly and*
36 *explicitly includes the following:*

37 *(A) The rights and obligations between the licensees arising*
38 *out of the business relationship relating to insurance or securities*
39 *transactions.*

1 (B) An explicit limitation on the use of nonpublic personal
2 information about a consumer to transactions authorized by the
3 contract and permitted pursuant to this division.

4 (C) A requirement that transactions specified in the contract
5 fall within the scope of activities permitted by the licenses of the
6 parties.

7 (b) The restrictions on disclosure and use of nonpublic
8 personal information, and the requirement for notification and
9 disclosure provided in this division, shall not limit the ability of
10 insurance producers and brokers to respond to written or
11 electronic, including telephone, requests from consumers seeking
12 price quotes on insurance products and services or to obtain
13 competitive quotes to renew an existing insurance contract,
14 provided that any nonpublic personal information disclosed
15 pursuant to this subdivision shall not be used or disclosed except
16 in the ordinary course of business in order to obtain those quotes.

17 (c) (1) The disclosure or sharing of nonpublic personal
18 information from an insurer, as defined in Section 23 of the
19 Insurance Code, or its affiliates to an exclusive agent, defined for
20 purposes of this division as a licensed agent or broker pursuant to
21 Chapter 5 (commencing with Section 1621) of Part 2 of Division
22 1 of the Insurance Code whose contractual or employment
23 relationship requires that the agent offer only the insurer's policies
24 for sale or financial products or services that meet the
25 requirements of paragraph (2) of subdivision (b) of Section 4053
26 and are authorized by the insurer, or whose contractual or
27 employment relationship with an insurer gives the insurer the right
28 of first refusal for all policies of insurance by the agent, and who
29 may not share nonpublic personal information with any insurer
30 other than the insurer with whom the agent has a contractual or
31 employment relationship as described above, is not a violation of
32 this division, provided that the agent may not disclose nonpublic
33 personal information to any party except as permitted by this
34 division. An insurer or its affiliates do not disclose or share
35 nonpublic personal information with exclusive agents merely
36 because information is maintained in common information
37 systems or databases, and exclusive agents of the insurer or its
38 affiliates have access to those common information systems or
39 databases, provided that where a consumer has exercised his or
40 her rights to prohibit disclosure pursuant to this division,

1 *nonpublic personal information is not further disclosed or used by*
2 *an exclusive agent except as permitted by this division.*

3 *(2) Nothing in this subdivision is intended to affect the sharing*
4 *of information allowed in subdivision (a) or subdivision (b).*

5 *4057. (a) An entity that negligently discloses or shares*
6 *nonpublic personal information in violation of this division shall*
7 *be liable, irrespective of the amount of damages suffered by the*
8 *consumer as a result of that violation, for a civil penalty not to*
9 *exceed two thousand five hundred dollars (\$2,500) per violation.*

10 *However, if the disclosure or sharing results in the release of*
11 *nonpublic personal information of more than one individual, the*
12 *total civil penalty awarded pursuant to this subdivision shall not*
13 *exceed five hundred thousand dollars (\$500,000).*

14 *(b) An entity that knowingly and willfully obtains, discloses,*
15 *shares, or uses nonpublic personal information in violation of this*
16 *division shall be liable for a civil penalty not to exceed two*
17 *thousand five hundred dollars (\$2,500) per individual violation,*
18 *irrespective of the amount of damages suffered by the consumer as*
19 *a result of that violation.*

20 *(c) In determining the penalty to be assessed pursuant to a*
21 *violation of this division, the court shall take into account the*
22 *following factors:*

23 *(1) The total assets and net worth of the violating entity.*

24 *(2) The nature and seriousness of the violation.*

25 *(3) The persistence of the violation, including any attempts to*
26 *correct the situation leading to the violation.*

27 *(4) The length of time over which the violation occurred.*

28 *(5) The number of times the entity has violated this division.*

29 *(6) The harm caused to consumers by the violation.*

30 *(7) The level of proceeds derived from the violation.*

31 *(8) The impact of possible penalties on the overall fiscal*
32 *solvency of the violating entity.*

33 *(d) In the event a violation of this division results in the identity*
34 *theft of a consumer, as defined by Section 530.5 of the Penal Code,*
35 *the civil penalties set forth in this section shall be doubled.*

36 *(e) The civil penalties provided for in this section shall be*
37 *exclusively assessed and recovered in a civil action brought in the*
38 *name of the people of the State of California in any court of*
39 *competent jurisdiction by any of the following:*

40 *(1) The Attorney General.*

1 (2) *The functional regulator with jurisdiction over regulation*
2 *of the financial institution as follows:*

3 (A) *In the case of banks, savings associations, credit unions,*
4 *commercial lending companies, and bank holding companies, by*
5 *the Department of Financial Institutions or the appropriate*
6 *federal authority; (B) in the case of any person engaged in the*
7 *business of insurance, by the Department of Insurance; (C) in the*
8 *case of any investment broker or dealer; investment company,*
9 *investment advisor, residential mortgage lender or finance lender,*
10 *by the Department of Corporations; and (D) in the case of a*
11 *financial institution not subject to the jurisdiction of any*
12 *functional regulator listed under subparagraphs (A) to (C),*
13 *inclusive, above, by the Attorney General.*

14 4058. *Nothing in this division shall be construed as altering*
15 *or annulling the authority of any department or agency of the state*
16 *to regulate any financial institution subject to its jurisdiction.*

17 4058.5. *This division shall preempt and be exclusive of all*
18 *local agency ordinances and regulations relating to the use and*
19 *sharing of nonpublic personal information by financial*
20 *institutions. This section shall apply both prospectively and*
21 *retroactively.*

22 4058.7. *Nothing in this division shall prevent an insurer, as*
23 *defined in Section 23 of the Insurance Code, from combining the*
24 *form required by subdivision (d) of Section 4053 with the form*
25 *required pursuant to Article 6.6 (commencing with Section 791) of*
26 *Chapter 1 of Part 2 of Division 1 of the Insurance Code and state*
27 *regulations implementing the provisions of that article, provided*
28 *that the combined form meets the requirements contained in*
29 *paragraph (1) of subdivision (d) of Section 4053.*

30 4059. *The provisions of this division shall be severable, and*
31 *if any phrase, clause, sentence, or provision is declared to be*
32 *invalid or is preempted by federal law or regulation, the validity*
33 *of the remainder of this division shall not be affected thereby.*

34 4060. *This division shall become operative on July 1, 2004.*
35 ~~*is added to the Financial Code, to read:*~~

36

~~DIVISION 1.2.—CALIFORNIA FINANCIAL
INFORMATION PRIVACY ACT~~

~~4050.— This division shall be known and may be cited as the
California Financial Information Privacy Act.~~

~~4051.— (a) The Legislature intends for financial institutions to
provide their consumers notice and meaningful choice about how
consumers' nonpublic personal information is shared or sold by
their financial institutions.~~

~~(b) It is the intent of the Legislature in enacting the California
Financial Information Privacy Act to afford persons greater
privacy protections than those provided in Public Law 106-102,
the federal Gramm-Leach-Bliley Act, and that this division be
interpreted to be consistent with that purpose.~~

~~4051.5.— (a) The Legislature finds and declares all of the
following:~~

~~(1) The California Constitution protects the privacy of
California citizens from unwarranted intrusions into their private
and personal lives.~~

~~(2) Federal banking legislation, known as the
Gramm-Leach-Bliley Act, which breaks down restrictions on
affiliation among different types of financial institutions,
increases the likelihood that the personal financial information of
California residents will be widely shared among, between, and
within companies.~~

~~(3) The policies intended to protect financial privacy imposed
by the Gramm-Leach-Bliley Act are inadequate to meet the
privacy concerns of California residents.~~

~~(4) Because of the limitations of these federal policies, the
Gramm-Leach-Bliley Act explicitly permits states to enact
privacy protections that are stronger than those provided in federal
law.~~

~~(b) It is the intent of the Legislature in enacting this division:~~

~~(1) To ensure that Californians have the ability to control the
disclosure of what the Gramm-Leach-Bliley Act calls nonpublic
personal information for purposes other than those of the
transactions into which they have entered.~~

~~(2) To achieve that control for California consumers by
requiring that financial institutions that want to share information
with third parties and unrelated companies seek and acquire the~~

1 affirmative consent of California consumers prior to sharing the
2 information.

3 (3) To further achieve that control for California consumers by
4 providing consumers with the ability to prevent the sharing of
5 financial information among affiliated companies through a
6 simple opt-out mechanism via a clear and understandable notice
7 provided to the consumer.

8 (4) To provide, to the maximum extent possible, consistent
9 with the purposes cited above, a level playing field among types
10 and sizes of businesses consistent with the objective of providing
11 consumers control over their nonpublic personal information;
12 including providing that those financial institutions with limited
13 affiliate relationships may enter into agreements with other
14 financial institutions on an “affiliate equivalent” basis, as defined
15 in statute, and providing that the different business models of
16 differing financial institutions are treated in ways that provide
17 consistent consumer control over information-sharing practices.

18 (5) To adopt to the maximum extent feasible, consistent with
19 the purposes cited above, definitions consistent with federal law,
20 so that in particular there is no change in the ability of businesses
21 to carry out normal processes of commerce for transactions
22 voluntarily entered into by consumers.

23 4052. For the purposes of this division:

24 (a) “Nonpublic personal information” means personally
25 identifiable financial information (1) provided by a consumer to
26 a financial institution, (2) resulting from any transaction with the
27 consumer or any service performed for the consumer, or (3)
28 otherwise obtained by the financial institution. Nonpublic
29 personal information does not include publicly available
30 information that the financial institution has a reasonable basis to
31 believe is lawfully made available to the general public from (1)
32 federal, state, or local government records, (2) widely distributed
33 media, or (3) disclosures to the general public that are required to
34 be made by federal, state, or local law. Nonpublic personal
35 information shall include any list, description, or other grouping
36 of consumers, and publicly available information pertaining to
37 them that is derived using any nonpublic personal information
38 other than publicly available information, but shall not include any
39 list, description, or other grouping of consumers, and publicly

1 available information pertaining to them that is derived without
2 using any nonpublic personal information.

3 (b) ~~“Personally identifiable financial information” means~~
4 ~~information (1) that a consumer provides to a financial institution~~
5 ~~to obtain a product or service from the financial institution, (2)~~
6 ~~about a consumer resulting from any transaction involving a~~
7 ~~product or service between the financial institution and a~~
8 ~~consumer, or (3) that the financial institution otherwise obtains~~
9 ~~about a consumer in connection with providing a product or~~
10 ~~service to that consumer. Any personally identifiable information~~
11 ~~is financial if it was obtained by a financial institution in~~
12 ~~connection with providing a financial product or service to a~~
13 ~~consumer. Personally identifiable financial information includes~~
14 ~~all of the following:~~

15 (1) ~~Information a consumer provides to a financial institution~~
16 ~~on an application to obtain a loan, credit card, or other financial~~
17 ~~product or service.~~

18 (2) ~~Account balance information, payment history, overdraft~~
19 ~~history, and credit or debit card purchase information.~~

20 (3) ~~The fact that an individual is or has been a consumer of a~~
21 ~~financial institution or has obtained a financial product or service~~
22 ~~from a financial institution.~~

23 (4) ~~Any information about a financial institution’s consumer if~~
24 ~~it is disclosed in a manner that indicates that the individual is or has~~
25 ~~been the financial institution’s consumer.~~

26 (5) ~~Any information that a consumer provides to a financial~~
27 ~~institution or that a financial institution or its agent otherwise~~
28 ~~obtains in connection with collecting on a loan or servicing a loan.~~

29 (6) ~~Any personally identifiable financial information collected~~
30 ~~through an Internet cookie or an information collecting device~~
31 ~~from a Web server.~~

32 (7) ~~Information from a consumer report.~~

33 (c) ~~“Financial institution” means any institution the business~~
34 ~~of which is engaging in financial activities as described in Section~~
35 ~~1843(k) of Title 12 of the United States Code and doing business~~
36 ~~in this state. An institution that is not significantly engaged in~~
37 ~~financial activities is not a financial institution. The term~~
38 ~~“financial institution” does not include any institution that is~~
39 ~~primarily engaged in providing hardware, software, or interactive~~
40 ~~services, provided that it is not engaged in the practice of debt~~

1 collection, as defined in Section 1788.2 of the Civil Code, the
2 practice of tax preparation, as defined in Section 22251 of the
3 Business and Professions Code, or activities for which the
4 institution is required to acquire a charter, license, or registration
5 from a state or federal governmental banking, insurance, or
6 securities agency. The term “financial institution” does not
7 include the Federal Agricultural Mortgage Corporation or any
8 entity chartered and operating under the Farm Credit Act of 1971
9 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell
10 or transfer nonpublic personal information to an affiliate or a
11 nonaffiliated third party. The term “financial institution” does not
12 include institutions chartered by Congress specifically to engage
13 in a proposed or actual securitization, secondary market sale,
14 including sales of servicing rights, or similar transactions related
15 to a transaction of the consumer, as long as those institutions do not
16 sell or transfer nonpublic personal information to a nonaffiliate
17 third party. The term “financial institution” does not include any
18 provider of professional services, or any wholly owned affiliate
19 thereof, that is prohibited by rules of professional ethics and
20 applicable law from voluntarily disclosing confidential client
21 information without the consent of the client.

22 (d) “Affiliate” means any entity that controls, is controlled by,
23 or is under common control with, another entity, but does not
24 include a joint employee of the entity and the affiliate. A
25 franchisor, including any affiliate thereof, shall be deemed an
26 affiliate of the franchisee for purposes of this division.

27 (e) “Nonaffiliated third party” means any entity that is not an
28 affiliate of, or related by common ownership or affiliated by
29 corporate control with, the financial institution, but does not
30 include a joint employee of that institution and a third party.

31 (f) “Consumer” means an individual resident of this state, or
32 that individual’s legal representative, who obtains or has obtained
33 from a financial institution a financial product or service to be used
34 primarily for personal, family, or household purposes. For
35 purposes of this division, an individual resident of this state is
36 someone whose last known mailing address, other than an Armed
37 Forces Post Office or Fleet Post Office address, as shown in the
38 records of the financial institution, is located in this state. For
39 purposes of this division, an individual is not a consumer of a
40 financial institution solely because he or she is (1) a participant or

1 beneficiary of an employee benefit plan that a financial institution
2 administers or sponsors, or for which the financial institution acts
3 as a trustee, insurer, or fiduciary, (2) covered under a group or
4 blanket insurance policy or group annuity contract issued by the
5 financial institution, (3) a beneficiary in a workers' compensation
6 plan, (4) a beneficiary of a trust for which the financial institution
7 is a trustee, or (5) a person who has designated the financial
8 institution as trustee for a trust, provided that the financial
9 institution provides all required notices and rights required by this
10 division to the plan sponsor, group or blanket insurance
11 policyholder, or group annuity contract holder.

12 (g) "Control" means (1) ownership or power to vote 25
13 percent or more of the outstanding shares of any class of voting
14 security of a company, acting through one or more persons, (2)
15 control in any manner over the election of a majority of the
16 directors, or of individuals exercising similar functions, or (3) the
17 power to exercise, directly or indirectly, a controlling influence
18 over the management or policies of a company. However, for
19 purposes of the application of the definition of control as it relates
20 to credit unions, a credit union has a controlling influence over the
21 management or policies of a credit union service organization
22 (CUSO), as that term is defined by state or federal law or
23 regulation, if the CUSO is at least 67 percent owned by credit
24 unions. For purposes of the application of the definition of control
25 to a financial institution subject to regulation by the United States
26 Securities and Exchange Commission, a person who owns
27 beneficially, either directly or through one or more controlled
28 companies, more than 25 percent of the voting securities of a
29 company is presumed to control the company, and a person who
30 does not own more than 25 percent of the voting securities of a
31 company is presumed not to control the company, and a
32 presumption regarding control may be rebutted by evidence, but
33 in the case of an investment company, the presumption shall
34 continue until the United States Securities and Exchange
35 Commission makes a decision to the contrary according to the
36 procedures described in Section 2(a)(9) of the federal Investment
37 Company Act of 1940.

38 (h) "Necessary to effect, administer, or enforce" means the
39 following:

~~(1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes the following:~~

~~(A) Providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction; or information on the status or value of the financial service or financial product.~~

~~(B) The accrual or recognition of incentives, discounts, or bonuses associated with the transaction or communications to eligible existing consumers of the financial institution regarding the availability of those incentives, discounts, and bonuses that are provided by the financial institution or another party.~~

~~(C) In the case of a financial institution that has issued a credit account bearing the name of a company primarily engaged in retail sales or a name proprietary to a company primarily engaged in retail sales, nothing in this division shall prohibit the financial institution from providing the retailer with nonpublic personal information as follows:~~

~~(i) Where the credit account can only be used for transactions with the retailer or affiliates of that retailer that are also primarily engaged in retail sales, providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and under a contract with the retailer, with nonpublic personal information concerning the credit account, in connection with the offering or provision of the products or services of the retailer and those licensees or contractors.~~

~~(ii) Providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and under a contract with the retailer, with the names and addresses of the consumers in whose name the account is held and a record of the purchases made using the credit account from a business establishment, including a Web site or catalog, bearing the brand name of the retailer.~~

~~(2) The disclosure is required or is one of the lawful or appropriate methods to enforce the rights of the financial~~

1 institution or of other persons engaged in carrying out the financial
2 transaction or providing the product or service.

3 ~~(3) The disclosure is required, or is a usual, appropriate, or~~
4 ~~acceptable method for insurance underwriting or the placement of~~
5 ~~insurance products by licensed agents and brokers with authorized~~
6 ~~insurance companies at the consumer's request, for reinsurance,~~
7 ~~stop loss insurance, or excess loss insurance purposes, or for any~~
8 ~~of the following purposes as they relate to a consumer's insurance:~~

9 ~~(A) Account administration.~~

10 ~~(B) Reporting, investigating, or preventing fraud or material~~
11 ~~misrepresentation.~~

12 ~~(C) Processing premium payments.~~

13 ~~(D) Processing insurance claims.~~

14 ~~(E) Administering insurance benefits, including utilization~~
15 ~~review activities.~~

16 ~~(F) Participating in research projects.~~

17 ~~(G) As otherwise required or specifically permitted by federal~~
18 ~~or state law.~~

19 ~~(4) The disclosure is required, or is a usual, appropriate, or~~
20 ~~acceptable method, in connection with the following:~~

21 ~~(A) The authorization, settlement, billing, processing,~~
22 ~~clearing, transferring, reconciling, or collection of amounts~~
23 ~~charged, debited, or otherwise paid using a debit, credit or other~~
24 ~~payment card, check, or account number, or by other payment~~
25 ~~means.~~

26 ~~(B) The transfer of receivables, accounts, or interests therein.~~

27 ~~(C) The audit of debit, credit, or other payment information.~~

28 ~~(5) The disclosure is required in a transaction covered by the~~
29 ~~federal Real Estate Settlement Procedures Act (12 U.S.C. Sec.~~
30 ~~2601 et seq.) in order to offer settlement services prior to the close~~
31 ~~of escrow (as those services are defined in 12 U.S.C. Sec. 2602),~~
32 ~~provided that (A) the nonpublic personal information is disclosed~~
33 ~~for the sole purpose of offering those settlement services and (B)~~
34 ~~the nonpublic personal information disclosed is limited to that~~
35 ~~necessary to enable the financial institution to offer those~~
36 ~~settlement services in that transaction.~~

37 ~~(i) "Financial product or service" means any product or~~
38 ~~service that a financial holding company could offer by engaging~~
39 ~~in an activity that is financial in nature or incidental to a financial~~
40 ~~activity under subsection (k) of Section 1843 of Title 12 of the~~

1 United States Code (the United States Bank Holding Company Act
2 of 1956). Financial service includes a financial institution's
3 evaluation or brokerage of information that the financial
4 institution collects in connection with a request or an application
5 from a consumer for a financial product or service.

6 (j) "Clear and conspicuous" means that a notice is reasonably
7 understandable and designed to call attention to the nature and
8 significance of the information contained in the notice.

9 (k) "Widely distributed media" means media available to the
10 general public and includes a telephone book, a television or radio
11 program, a newspaper, or a Web site that is available to the general
12 public on an unrestricted basis.

13 4052.5. Except as provided in Section 4053, a financial
14 institution shall not sell, share, transfer, or otherwise disclose
15 nonpublic personal information to or with any nonaffiliated third
16 parties without the explicit prior consent of the consumer to whom
17 the nonpublic personal information relates.

18 4053. (a) (1) A financial institution shall not disclose to, or
19 share a consumer's nonpublic personal information with, any
20 nonaffiliated third party as prohibited by Section 4052.5, unless
21 the financial institution has obtained a consent acknowledgment
22 from the consumer that complies with paragraph (2) that
23 authorizes the financial institution to disclose or share the
24 nonpublic personal information. Nothing in this section shall
25 prohibit or otherwise apply to the disclosure of nonpublic personal
26 information as allowed in Section 4056. A financial institution
27 shall not discriminate against or deny an otherwise qualified
28 consumer a financial product or a financial service because the
29 consumer has not provided consent pursuant to this subdivision
30 and Section 4052.5 to authorize the financial institution to disclose
31 or share nonpublic personal information pertaining to him or her
32 with any nonaffiliated third party. Nothing in this section shall
33 prohibit a financial institution from denying a consumer a
34 financial product or service if the financial institution could not
35 provide the product or service to a consumer without disclosure of
36 the consumer's nonpublic personal information, and the consumer
37 has failed to provide consent for that disclosure pursuant to this
38 subdivision and Section 4052.5. A financial institution shall not be
39 liable for failing to offer products and services to a consumer
40 solely because that consumer has failed to provide consent

1 pursuant to this subdivision and Section 4052.5 and the financial
2 institution could not offer the product or service without disclosing
3 the consumer's nonpublic personal information. Nothing in this
4 section is intended to prohibit a financial institution from offering
5 incentives or discounts to elicit a specific response to the notice.

6 (2) ~~A financial institution shall not utilize a form, statement, or~~
7 ~~writing to obtain consent to disclose nonpublic personal~~
8 ~~information to nonaffiliated third parties as required by Section~~
9 ~~4052.5 and this subdivision unless the form, statement, or writing~~
10 ~~meets all the following criteria:~~

11 (A) ~~The form, statement, or writing is a separate document, not~~
12 ~~attached to any other document.~~

13 (B) ~~The form, statement, or writing is dated and signed by the~~
14 ~~consumer.~~

15 (C) ~~The form, statement, or writing clearly and conspicuously~~
16 ~~discloses that by signing, the consumer is consenting to the~~
17 ~~disclosure to nonaffiliated third parties of nonpublic personal~~
18 ~~information pertaining to the consumer.~~

19 (D) ~~The form, statement, or writing clearly and conspicuously~~
20 ~~discloses (i) that the consent will remain in effect until revoked or~~
21 ~~modified by the consumer; (ii) that the consumer may revoke the~~
22 ~~consent at any time; and (iii) the procedure for the consumer to~~
23 ~~revoke consent.~~

24 (E) ~~The form, statement, or writing clearly and conspicuously~~
25 ~~informs the consumer that (i) the financial institution will maintain~~
26 ~~the document or a true and correct copy; (ii) the consumer is~~
27 ~~entitled to a copy of the document upon request; and (iii) the~~
28 ~~consumer may want to make a copy of the document for the~~
29 ~~consumer's records.~~

30 (b) (1) ~~A financial institution shall not disclose to, or share a~~
31 ~~consumer's nonpublic personal information with, an affiliate~~
32 ~~unless the financial institution clearly and conspicuously notifies~~
33 ~~the consumer annually in writing pursuant to subdivision (d) that~~
34 ~~the nonpublic personal information may be disclosed to an affiliate~~
35 ~~of the financial institution and the consumer has not directed that~~
36 ~~the nonpublic personal information not be disclosed. A financial~~
37 ~~institution does not disclose information to, or share information~~
38 ~~with, its affiliate merely because information is maintained in~~
39 ~~common information systems or databases, and employees of the~~
40 ~~financial institution and its affiliate have access to those common~~

~~information systems or databases, or a consumer accesses a Web site jointly operated or maintained under a common name by or on behalf of the financial institution and its affiliate, provided that where a consumer has exercised his or her right to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an affiliate except as permitted by this division.~~

~~(2) Subdivision (a) shall not prohibit the release of nonpublic personal information by a financial institution with whom the consumer has a relationship to a nonaffiliated financial institution for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the nonpublic personal information provided that all of the following requirements are met:~~

~~(A) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement.~~

~~(B) The financial product or service is jointly offered, endorsed, or sponsored, and clearly and conspicuously identifies for the consumer the financial institutions that disclose and receive the disclosed nonpublic personal information.~~

~~(C) The written agreement provides that the financial institution that receives that nonpublic personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement.~~

~~(D) The financial institution that releases the nonpublic personal information has complied with subdivision (d) and the consumer has not directed that the nonpublic personal information not be disclosed. The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a).~~

~~(E) Notwithstanding this section, until January 1, 2005, a financial institution may disclose nonpublic personal information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before January 1, 2004. Beginning on January 1, 2005, no nonpublic personal information may be~~

1 disclosed pursuant to that contract unless all the requirements of
2 this subdivision are met.

3 ~~(3) Nothing in this subdivision shall prohibit a financial~~
4 ~~institution from disclosing or sharing nonpublic personal~~
5 ~~information as otherwise specifically permitted by this division.~~

6 ~~(4) A financial institution shall not discriminate against or deny~~
7 ~~an otherwise qualified consumer a financial product or a financial~~
8 ~~service because the consumer has directed pursuant to this~~
9 ~~subdivision that nonpublic personal information pertaining to him~~
10 ~~or her not be disclosed. A financial institution shall not be required~~
11 ~~to offer or provide products or services offered through affiliated~~
12 ~~entities solely because the consumer has directed that nonpublic~~
13 ~~personal information not be disclosed to affiliates pursuant to this~~
14 ~~subdivision and the financial institution could not offer or provide~~
15 ~~the products or services to the consumer without disclosure of the~~
16 ~~consumer's nonpublic personal information. A financial~~
17 ~~institution shall not be liable for failing to offer or provide products~~
18 ~~or services offered through affiliated entities solely because the~~
19 ~~consumer has directed that nonpublic personal information not be~~
20 ~~disclosed to affiliates pursuant to this subdivision and the financial~~
21 ~~institution could not offer or provide the products or services to the~~
22 ~~consumer without disclosure of the consumer's nonpublic~~
23 ~~information. Nothing in this section shall prohibit the disclosure~~
24 ~~of nonpublic personal information allowed by Section 4056.~~
25 ~~Nothing in this section is intended to prohibit a financial institution~~
26 ~~from offering incentives or discounts to elicit a specific response~~
27 ~~to the notice set forth in this division.~~

28 ~~(e) Nothing in this division shall restrict or prohibit the sharing~~
29 ~~of nonpublic personal information between a financial institution~~
30 ~~and its wholly owned financial institution subsidiaries; among~~
31 ~~financial institutions that are each wholly owned by the same~~
32 ~~financial institution; or among the insurance entities of a single~~
33 ~~insurance holding company system consisting of one or more~~
34 ~~reciprocal insurance exchanges which has a single corporation or~~
35 ~~its wholly owned subsidiaries providing management services to~~
36 ~~the reciprocal insurance exchanges, provided that in each case all~~
37 ~~of the following requirements are met:~~

38 ~~(1) The financial institution disclosing the nonpublic personal~~
39 ~~information and the financial institution receiving it are regulated~~
40 ~~by the same functional regulator; provided, however, that for~~

purposes of this subdivision, financial institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, or a state regulator of depository institutions shall be deemed to be regulated by the same functional regulator; and insurers admitted in this state to transact insurance and licensed to write insurance policies shall be deemed to be in compliance with this paragraph.

(2) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are each engaged in the same line of business. For purposes of this subdivision, “same line of business” shall be any one of the following:

(A) Insurance products, including annuities and variable life products.

(B) Banking, including lending, deposit-taking, trust and payment services, and credit services.

(C) Securities, including underwriting, dealing, market-making, investment advisory services, and merchant banking.

(3) The financial institution disclosing the nonpublic personal information and the financial institution receiving it share a common brand name within their trademark, service mark, or trade name, which is used to identify the source of the products and services provided.

Nothing in this subdivision shall permit the disclosure by a financial institution of medical information, as defined in subdivision (q) of Section 791.02 of the Insurance Code, except in compliance with the requirements of this division, including the requirements set forth in subdivisions (a) and (b).

(d) (1) A financial institution shall be conclusively presumed to have satisfied the notice requirements of subdivision (b) if it uses the form set forth in this subdivision. The form set forth in this subdivision shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. A form that does not use the specific language provided in this subdivision shall meet all of the following requirements:

(A) The form uses the same title (“IMPORTANT PRIVACY CHOICES FOR CONSUMERS”) and headers (headings

1 designated in the form set forth below, such as “Restricting
2 Information Sharing to the Greatest Extent Allowed By Law”).

3 (B) The titles and headers in the form are clearly and
4 conspicuously displayed, and no text in the form is smaller than
5 10-point type.

6 (C) The form is a separate document, except as provided by this
7 section, and Sections 4054 and 4058.7.

8 (D) The “choice boxes” provided in the form use the same
9 language (for example, “_____No, please do not share ...”).

10 (E) The form is designed to call attention to the nature and
11 significance of the information in the document.

12 (F) The form presents information in clear and concise
13 sentences, paragraphs, and sections.

14 (G) The form uses short explanatory sentences (an average of
15 15-20 words) or bullet lists whenever possible.

16 (H) The form avoids multiple negatives, legal terminology, and
17 highly technical terminology whenever possible.

18 (I) The form avoids explanations that are imprecise and readily
19 subject to different interpretations.

20 (J) The form achieves a minimum flesch reading ease score of
21 50, as defined in Section 2689.4(a)(7) of Title 10 of the California
22 Code of Regulations, in effect on March 24, 2003.

23 (K) The form provides wide margins, ample line spacing and
24 uses boldface or italics for key words.

25 (L) The form is not more than one page.

26 (2) (A) None of the instructional items appearing in brackets
27 in the form set forth in this subdivision shall appear in the form
28 provided to the consumer, as those items are for explanation
29 purposes only. If a financial institution does not disclose or share
30 nonpublic personal information as described in any one or more
31 of the first three headers of the form, the financial institution is not
32 required to include the applicable header or headers, and the
33 accompanying information and box, in the form it provides
34 pursuant to this subdivision.

1 ~~PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE~~
2 ~~INSERTED HERE~~
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2 ~~(B) If a consumer selects the box associated with the header~~
3 ~~restricting information sharing to the greatest extent allowed by~~
4 ~~law, that choice shall supersede all other choices.~~

5 ~~(C) A financial institution shall not be in violation of this~~
6 ~~subdivision solely because it includes in the form one or more brief~~
7 ~~examples or explanations of the purpose or purposes, or context,~~
8 ~~within which information will be shared, as long as those examples~~
9 ~~meet the clarity and readability standards set forth in paragraph~~
10 ~~(1).~~

11 ~~(D) The outside of the envelope in which the form is sent to the~~
12 ~~consumer shall clearly state in 16 point boldface type~~
13 ~~“IMPORTANT PRIVACY CHOICES,” except that a financial~~
14 ~~institution sending the form to a consumer in the same envelope~~
15 ~~as a bill, account statement, or application requested by the~~
16 ~~consumer does not have to include the wording “IMPORTANT~~
17 ~~PRIVACY CHOICES” on that envelope. The form shall be sent~~
18 ~~in any of the following ways:~~

19 ~~(i) With a bill, other statement of account, or application~~
20 ~~requested by the consumer, in which case the information required~~
21 ~~by Title V of the Gramm Leach Bliley Act may also be included~~
22 ~~in the same envelope.~~

23 ~~(ii) As a separate notice or with the information required by~~
24 ~~Title V of the Gramm-Leach-Bliley Act, and including only~~
25 ~~information related to privacy.~~

26 ~~(iii) With any other mailing, in which case it shall be the first~~
27 ~~page of the mailing.~~

28 ~~(3) The consumer shall be provided an opportunity to direct~~
29 ~~that the nonpublic personal information not be disclosed except as~~
30 ~~otherwise permitted by this division. A consumer may direct at any~~
31 ~~time that his or her nonpublic personal information not be~~
32 ~~disclosed, except as otherwise permitted by this division. A~~
33 ~~financial institution shall comply with a consumer’s directions~~
34 ~~concerning the sharing of his or her nonpublic personal~~
35 ~~information within 45 days of receipt by the financial institution.~~
36 ~~When a consumer directs that nonpublic personal information not~~
37 ~~be disclosed, that direction is in effect until otherwise stated by the~~
38 ~~consumer.~~

39 ~~(4) A financial institution may elect to comply with the~~
40 ~~requirements of subdivision (a) with respect to disclosure of~~

~~1 nonpublic personal information to an affiliate or with respect to
2 nonpublic personal information disclosed pursuant to paragraph
3 (2) of subdivision (b).~~

~~4 (5) If a financial institution does not have a continuing
5 relationship with a consumer other than the initial transaction in
6 which the product or service is provided, no annual disclosure
7 requirement exists pursuant to this section as long as the financial
8 institution provides the consumer with the form required by this
9 section at the time of the initial transaction. As used in this section,
10 “annually” means at least once in any period of 12 consecutive
11 months during which that relationship exists. The financial
12 institution may define the 12-consecutive-month period, but shall
13 apply it to the consumer on a consistent basis. If, for example, a
14 financial institution defines the 12-consecutive-month period as a
15 calendar year and provides the annual notice to the consumer once
16 in each calendar year, it complies with the requirement to send the
17 notice annually.~~

~~18 (6) A financial institution with assets in excess of twenty-five
19 million dollars (\$25,000,000) shall include a self-addressed first
20 class business reply return envelope with the notice. A financial
21 institution with assets of up to and including twenty-five million
22 dollars (\$25,000,000) shall include a self-addressed return
23 envelope with the notice. In addition to the return envelope
24 required by this paragraph, a financial institution may offer
25 additional means for consumers to communicate their privacy
26 choices, such as calling a toll-free number, sending a facsimile to
27 a toll-free telephone number, or using electronic means. A
28 financial institution shall clearly and conspicuously disclose in the
29 form required by this subdivision the information necessary to
30 direct the consumer on how to communicate his or her choices,
31 including the toll-free or facsimile number or Web site address that
32 may be used, if those means of communication are offered by the
33 financial institution.~~

~~34 (7) If the notice sent by a financial institution deviates from the
35 notice included in this subdivision, a financial institution shall file
36 a copy of the initial notice or notices required by this subdivision
37 with the Attorney General. No subsequent filing is required until
38 the financial institution modifies the notice, in which case a copy
39 of the notice as modified shall be filed with the Attorney General.
40 Nothing in this paragraph shall be construed to require that a~~

~~financial institution file with the Attorney General a copy of the notice or notices it provides to consumers more often than once in each calendar year. The Attorney General may approve for use by a financial institution a notice which deviates from the notice included in paragraph (2) prior to use by that financial institution, as long as the notice complies with the provisions of subparagraphs (A) to (L), inclusive, of paragraph (1).~~

~~(8) A financial institution may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, so long as the notice is accurate with respect to the financial institution and the affiliates and other financial institutions.~~

~~(c) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of affiliates or nonaffiliated third parties to customers of the financial institution as long as (1) nonpublic personal information is not disclosed in connection with the delivery of the applicable marketing materials to those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate nonpublic personal information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from using that information for any purpose other than the transaction for which it was provided, and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party's compliance with that contract.~~

~~4053.5. Except as otherwise provided in this division, an entity that receives nonpublic personal information from a financial institution under this division shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution. An entity that receives nonpublic personal information pursuant to any exception set forth in Section 4056 shall not use or disclose the information except in the ordinary course of business to carry out the activity covered by the exception under which the information was received.~~

~~4054. (a) Nothing in this division shall require a financial institution to provide a written notice to a consumer pursuant to~~

~~Section 4053 if the financial institution does not disclose nonpublic personal information to any nonaffiliated third party or to any affiliate, except as allowed in this division.~~

~~(b) A notice provided to a member of a household pursuant to Section 4053 shall be considered notice to all members of that household unless that household contains another individual who also has a separate account with the financial institution.~~

~~(c) (1) The requirement to send a written notice to a consumer may be fulfilled by electronic means if the following requirements are met:~~

~~(A) The notice, and the manner in which it is sent, meets all of the requirements for notices that are required by law to be in writing, as set forth in Section 101 of the federal Electronic Signatures in Global and National Commerce Act.~~

~~(B) All other requirements applicable to the notice, as set forth in this division, are met, including, but not limited to, requirements concerning content, timing, form, and delivery. An electronic notice sent pursuant to this section is not required to include a return envelope.~~

~~(C) The notice is delivered to the consumer in a form the consumer may keep.~~

~~(2) A notice that is made available to a consumer, and is not delivered to the consumer, does not satisfy the requirements of paragraph (1).~~

~~(3) Any electronic consumer reply to an electronic notice sent pursuant to this division is effective. A person that electronically sends a notice required by this division to a consumer may not by contract, or otherwise, eliminate the effectiveness of the consumer's electronic reply.~~

~~(4) This division modifies the provisions of Section 101 of the federal Electronic Signatures in Global and National Commerce Act. However, it does not modify, limit, or supersede the provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act, nor does it authorize electronic delivery of any notice of the type described in subsection (b) of Section 103 of that federal act.~~

~~4054.6.—(a) When a financial institution and an organization or business entity that is not a financial institution have an agreement to issue a credit card in the name of the organization or~~

1 business entity (“affinity card”), the financial institution shall be
2 permitted to disclose to the organization or business entity in
3 whose name the card is issued only the following information
4 pertaining to the financial institution’s customers who are in
5 receipt of the affinity card: (1) name and address of those who
6 accepted the affinity card, the disclosure of which shall not
7 constitute a violation of this division, (2) electronic mail address,
8 and (3) record of purchases made using the affinity card in a
9 business establishment, including a Web site, bearing the brand
10 name of the organization or business entity, provided all of the
11 requirements of subdivision (b) are met.

12 (b) The disclosures specified in subdivision (a) shall be
13 permitted if the following requirements are met:

14 (1) The financial institution has provided, as it relates to
15 paragraph (3) of subdivision (a), the consumer the notice required
16 by paragraph (2) of subdivision (d) of Section 4053 or, if that
17 notice is not used, a notice meeting the requirements of paragraph
18 (1) of subdivision (d) of Section 4053, and the consumer has not
19 directed that nonpublic personal information not be disclosed,
20 except that the disclosure of the name and address of those in
21 receipt of the affinity card is allowed. The sharing or disclosing of
22 any information beyond that provided for in this section shall be
23 prohibited unless the financial institution has received prior
24 consent from the consumer pursuant to paragraph (2) of
25 subdivision (a) of Section 4053.

26 (2) The financial institution has a contractual agreement with
27 the organization or business entity that requires the organization
28 or entity in whose name the affinity card is issued to maintain the
29 confidentiality of the nonpublic personal information and
30 prohibits the entity in whose name the affinity card is issued from
31 using the information for any purposes other than verifying
32 membership, verifying the affinity cardholder’s address, or
33 offering the organization or entity’s own products or services to the
34 cardholder. Nothing in this section shall prohibit the disclosure of
35 nonpublic personal information allowed by Section 4056.

36 (3) The customer list is not disclosed in any way that reveals or
37 permits extrapolation of any additional nonpublic personal
38 information about any customer on the list.

39 (4) If the organization or business entity in whose name the
40 affinity card is issued sends any message to any electronic mail

~~addresses obtained pursuant to this section, the message shall include at least both of the following:~~

~~(A) The identity of the sender of the message.~~

~~(B) A cost free means for the recipient to notify the sender not to electronically mail any further messages to the recipient.~~

~~4056. (a) This division shall not apply to information that is not personally identifiable to a particular person.~~

~~(b) Sections 4052.5, 4053, and 4054 shall not prohibit the release of nonpublic personal information under the following circumstances:~~

~~(1) The nonpublic personal information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer.~~

~~(2) The nonpublic personal information is released with the consent of or at the direction of the consumer.~~

~~(3) The nonpublic personal information is:~~

~~(A) Released to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein.~~

~~(B) Released to protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability.~~

~~(C) Released for required institutional risk control, or for resolving customer disputes or inquiries.~~

~~(D) Released to persons holding a legal or beneficial interest relating to the consumer, including for purposes of debt collection.~~

~~(E) Released to persons acting in a fiduciary or representative capacity on behalf of the consumer.~~

~~(4) The nonpublic personal information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with~~

1 industry standards, and the institution's attorneys, accountants,
2 and auditors.

3 (5) The nonpublic personal information is released to the extent
4 specifically required or specifically permitted under other
5 provisions of law and in accordance with the Right to Financial
6 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law
7 enforcement agencies, including a federal functional regulator, the
8 Secretary of the Treasury with respect to subchapter II of Chapter
9 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
10 U.S.C. Secs. 1951-1959), the California Department of Insurance
11 or other state insurance regulators, or the Federal Trade
12 Commission, and self-regulatory organizations, or for an
13 investigation on a matter related to public safety.

14 (6) The nonpublic personal information is released in
15 connection with a proposed or actual sale, merger, transfer, or
16 exchange of all or a portion of a business or operating unit if the
17 disclosure of nonpublic personal information concerns solely
18 consumers of the business or unit.

19 (7) The nonpublic personal information is released to comply
20 with federal, state, or local laws, rules, and other applicable legal
21 requirements; to comply with a properly authorized civil,
22 criminal, administrative, or regulatory investigation or subpoena
23 or summons by federal, state, or local authorities; or to respond to
24 judicial process or government regulatory authorities having
25 jurisdiction over the financial institution for examination,
26 compliance, or other purposes as authorized by law.

27 (8) When a financial institution is reporting a known or
28 suspected instance of elder or dependent adult financial abuse or
29 is cooperating with a local adult protective services agency
30 investigation of known or suspected elder or dependent adult
31 financial abuse pursuant to Article 3 (commencing with Section
32 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
33 Institutions Code.

34 (9) The nonpublic personal information is released to an
35 affiliate or a nonaffiliated third party in order for the affiliate or
36 nonaffiliated third party to perform business or professional
37 services, such as printing, mailing services, data processing or
38 analysis, customer surveys, or offering the financial institution's
39 own products and services, on behalf of the financial institution;
40 provided that all of the following requirements are met:

~~(A) The services to be performed by the affiliate or nonaffiliated third party could lawfully be performed by the financial institution.~~

~~(B) There is a written contract between the affiliate or nonaffiliated third party and the financial institution that prohibits the affiliate or nonaffiliated third party, as the case may be, from disclosing or using the nonpublic personal information other than to carry out the purpose for which the financial institution disclosed the information, as set forth in the written contract.~~

~~(C) The nonpublic personal information provided to the affiliate or nonaffiliated third party is limited to that which is necessary for the affiliate or nonaffiliated third party to perform the services contracted for on behalf of the financial institution.~~

~~(D) The financial institution does not receive any payment from or through the affiliate or nonaffiliated third party in connection with, or as a result of, the release of the nonpublic personal information.~~

~~(10) The nonpublic personal information is released to identify or locate missing and abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.~~

~~(11) The nonpublic personal information is released to a real estate appraiser licensed or certified by the state for submission to central data repositories such as the California Market Data Cooperative, and the nonpublic personal information is compiled strictly to complete other real estate appraisals and is not used for any other purpose.~~

~~(12) The nonpublic personal information is released as required by Title III of the federal United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L. 107-56).~~

~~(13) The nonpublic personal information is released either to a consumer reporting agency pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) or from a consumer report reported by a consumer reporting agency.~~

~~(e) Nothing in this division is intended to change existing law relating to access by law enforcement agencies to information held by financial institutions.~~

1 ~~4056.5.—(a) The provisions of this division do not apply to any~~
2 ~~person or entity that meets the requirements of paragraph (1) or (2)~~
3 ~~below. However, when nonpublic personal information is being or~~
4 ~~will be shared by a person or entity meeting the requirements of~~
5 ~~paragraph (1) or (2) with an affiliate or nonaffiliated third party,~~
6 ~~this division shall apply.~~

7 ~~(1) The person or entity is licensed in one or both of the~~
8 ~~following categories and is acting within the scope of the~~
9 ~~respective license or certificate:~~

10 ~~(A) As an insurance producer, licensed pursuant to Chapter 5~~
11 ~~(commencing with Section 1621), Chapter 6 (commencing with~~
12 ~~Section 1760), or Chapter 8 (commencing with Section 1831) of~~
13 ~~Division 1 of the Insurance Code, as a registered investment~~
14 ~~adviser pursuant to Chapter 3 (commencing with Section 25230)~~
15 ~~of Part 3 of Division 1 of Title 4 of the Corporations Code, or as~~
16 ~~an investment adviser pursuant to Section 202(a)(11) of the federal~~
17 ~~Investment Advisers Act of 1940.~~

18 ~~(B) Is licensed to sell securities by the National Association of~~
19 ~~Securities Dealers (NASD).~~

20 ~~(2) The person or entity meets the requirements in paragraph~~
21 ~~(1) and has a written contractual agreement with another person or~~
22 ~~entity described in paragraph (1) and the contract clearly and~~
23 ~~explicitly includes the following:~~

24 ~~(A) The rights and obligations between the licensees arising~~
25 ~~out of the business relationship relating to insurance or securities~~
26 ~~transactions.~~

27 ~~(B) An explicit limitation on the use of nonpublic personal~~
28 ~~information about a consumer to transactions authorized by the~~
29 ~~contract and permitted pursuant to this division.~~

30 ~~(C) A requirement that transactions specified in the contract~~
31 ~~fall within the scope of activities permitted by the licenses of the~~
32 ~~parties.~~

33 ~~(b) The restrictions on disclosure and use of nonpublic personal~~
34 ~~information, and the requirement for notification and disclosure~~
35 ~~provided in this division, shall not limit the ability of insurance~~
36 ~~producers and brokers to respond to written or electronic,~~
37 ~~including telephone, requests from consumers seeking price~~
38 ~~quotes on insurance products and services or to obtain competitive~~
39 ~~quotes to renew an existing insurance contract, provided that any~~
40 ~~nonpublic personal information disclosed pursuant to this~~

~~subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.~~

~~(c) The disclosure or sharing of nonpublic personal information from an insurer, as defined in Section 23 of the Insurance Code, to an exclusive agent, defined for purposes of this division as a licensed agent or broker pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800) or Chapter 8 (commencing with Section 1831) of the Insurance Code whose contractual or employment relationship requires that the agent offer only the insurer's policies for sale or whose contractual or employment relationship with an insurer gives the insurer the right of first refusal for all policies of insurance by the agent, and who may only share information with the insurer with whom the agent has a contractual or employment relationship as described above, is not a violation of this division provided that the disclosure or sharing of nonpublic personal information may be limited by the consumer pursuant to any action taken in relation to subdivision (d) of Section 4053.~~

~~4057. (a) An entity that negligently discloses or shares nonpublic personal information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. However, if the disclosure or sharing results in the release of nonpublic personal information of more than one individual, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars (\$500,000).~~

~~(b) An entity that knowingly and willfully obtains, discloses, shares, or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation.~~

~~(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:~~

~~(1) The total assets and net worth of the violating entity.~~

~~(2) The nature and seriousness of the violation.~~

1 ~~(3) The persistence of the violation, including any attempts to~~
2 ~~correct the situation leading to the violation.~~

3 ~~(4) The length of time over which the violation occurred.~~

4 ~~(5) The number of times the entity has violated this division.~~

5 ~~(6) The harm caused to consumers by the violation.~~

6 ~~(7) The level of proceeds derived from the violation.~~

7 ~~(8) The impact of possible penalties on the overall fiscal~~
8 ~~solvency of the violating entity.~~

9 ~~(d) In the event a violation of this division results in the identity~~
10 ~~theft of a consumer, as defined by Section 530.5 of the Penal Code,~~
11 ~~the civil penalties set forth in this section shall be doubled.~~

12 ~~(e) The civil penalty pursuant to this section shall be assessed~~
13 ~~and recovered in a civil action brought in the name of the people~~
14 ~~of the State of California in any court of competent jurisdiction by~~
15 ~~any of the following:~~

16 ~~(1) The Attorney General.~~

17 ~~(2) Any district attorney.~~

18 ~~(3) Any county counsel authorized by agreement with the~~
19 ~~district attorney in actions involving violation of a county~~
20 ~~ordinance.~~

21 ~~(4) Any city attorney of a city.~~

22 ~~(5) Any city attorney of a city and county having a population~~
23 ~~in excess of 750,000, with the consent of the district attorney.~~

24 ~~(6) A city prosecutor in any city having a full-time city~~
25 ~~prosecutor or, with the consent of the district attorney, by a city~~
26 ~~attorney in any city and county.~~

27 ~~(f) This section shall become operative on and after July 1,~~
28 ~~2004, for acts in violation of this division that occur on and after~~
29 ~~July 1, 2004. No penalty shall be applicable for violations of this~~
30 ~~division occurring prior to July 1, 2004.~~

31 ~~4058. Nothing in this division shall be construed as altering or~~
32 ~~annulling the authority of any department or agency of the state to~~
33 ~~regulate any financial institution subject to its jurisdiction.~~

34 ~~4058.5. This division shall preempt and be exclusive of all~~
35 ~~local agency ordinances and regulations relating to the use and~~
36 ~~sharing of nonpublic personal information by financial~~
37 ~~institutions. This section shall apply both prospectively and~~
38 ~~retroactively.~~

39 ~~4058.7. Nothing in this division shall prevent an insurer, as~~
40 ~~defined in Section 23 of the Insurance Code, from combining the~~

1 ~~form required by Section 4053 with the form required pursuant to~~
2 ~~Article 6.6 (commencing with Section 791) of Chapter 1 of Part~~
3 ~~2 of Division 1 of the Insurance Code and state regulations~~
4 ~~implementing the provisions of that article, provided that the~~
5 ~~combined form meets the requirements contained in paragraph (1)~~
6 ~~of subdivision (d) of Section 4053.~~
7 ~~4059. The provisions of this division shall be severable, and~~
8 ~~if any phrase, clause, sentence, or provision is declared to be~~
9 ~~invalid or is preempted by federal law or regulation, the validity~~
10 ~~of the remainder of this division shall not be affected thereby.~~

